



August 5, 2019

via ECF

Hon. Ann M. Donnelly, U.S.D.J.  
 United States District Court, E.D.N.Y.  
 225 Cadman Plaza East, Rm. N 415  
 Brooklyn, New York 11201

Re: ALS Capital Ventures, LLC v. Lincoln Life & Annuity Co. of N.Y., et. al.  
 Docket No.: 18-cv-04551 (AMD) (JO)

Dear Judge Donnelly:

We represent plaintiff ALS Capital Ventures, LLC ("ALS") in the referenced action. We write, jointly with counsel for defendant J Rosenberg Distribution Trust (the "Distribution Trust"), to request that the Court consider ALS' pending motion to dismiss (D.E.s 25, 33) as a motion to dismiss the Counterclaims filed by the Distribution Trust on May 10, 2019 (D.E. 36).

On or about March 1, 2019, ALS filed a motion to dismiss (D.E.s 25, 33) the Counterclaims asserted by the Distribution Trust on December 3, 2018 (D.E. 12). After that motion was fully briefed, on consent of all parties, ALS filed an Amended Complaint (D.E. 31). In its Answer to the Amended Complaint, the Distribution Trust asserted the same three Counterclaims that it had asserted in its Answer to the initial Complaint (D.E. 36). As a result, the Distribution Trust's initial Counterclaims were mooted by its filing of the second set of Counterclaims. In light of the fact that the second set of Counterclaims contains the same allegations and claims as the one which ALS has already sought dismissal of, ALS and the Distribution Trust respectfully submit that it would be most efficient for the Court to consider ALS' pending motion to dismiss as one seeking dismissal of the Distribution Trust's second set of Counterclaims (D.E. 36). See CSX Transp., Inc. v. Emjay Envtl. Recycling, Ltd., 2013 U.S. Dist. LEXIS 41658, \*4-5, fn 3, 2013 WL 1209116 (E.D.N.Y. 2013).

In the event that the Court is not inclined to grant the above request, in accordance with Rule 4-A of Your Honor's Individual Practices and Rules, ALS respectfully requests a pre-motion conference with respect to its anticipated motion to dismiss the Distribution Trust's May 10, 2019 Counterclaims, for the reasons set forth in the pending motion to dismiss.

Respectfully,

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cc: All counsel of record (via ECF)